

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA,	:	Case No.
	:	
Plaintiff,	:	PLEA AGREEMENT
	:	
vs.	:	
	:	
MARTIN JEFF DORF,	:	
	:	
Defendant.	:	

It is hereby agreed between **MARTIN JEFF DORF** (hereafter, “DORF” or “Defendant”), individually and through his attorney, Kenneth R. Sheets, Esq., and the United States Attorney’s Office for the Southern District of Ohio (hereafter, “USAO”) (collectively, “the parties”), as follows:

1. Defendant waives and gives up the right to indictment by a grand jury and agrees to plead guilty to the one-count Information filed in this action, charging him with Attempt to Evade or Defeat Tax, in violation of 26 U.S.C. § 7201. The statutory maximum penalties for a violation of 26 U.S.C. § 7201, as charged in the one-count Information, are: 5 years imprisonment, a \$100,000 fine, 3 years of supervised release, costs of prosecution, and a mandatory \$100 special assessment. Defendant understands that the Court may order Defendant to pay any taxes, interest and penalties that Defendant owes to the Internal Revenue Service (“IRS”). Also, Defendant understands that the Court must order Defendant to pay the costs of prosecution, which may be in addition to the statutory maximum fines stated above. Defendant admits that he is, in fact, guilty of this offense as charged in the one-count Information, and that

the attached Statement of Facts, which is incorporated herein by this reference, is true and correct.

2. Defendant understands that the U.S. Probation Office (“Probation Office”) will conduct a pre-sentence investigation and will recommend to the Court an advisory Sentencing Guidelines range, including, among other matters, a Base Offense Level, specific offense characteristics, adjustments and any departures. For the purpose of calculating an advisory Sentencing Guidelines range only, the parties agree to recommend that the following Sentencing Guidelines Base Offense Level be considered by the Court at the time of sentencing:

Base Offense Level: 16 U.S.S.G. §§ 2T1.1(a)(1), 2T4.1(F)

The parties reserve the right to argue that additional specific offense characteristics, adjustments and departures are appropriate. Defendant understands that the Probation Office’s recommendations are not binding on the Court. Defendant understands that any agreements or recommendations made by the parties are not binding on the Court or the Probation Office. Defendant further understands that the Sentencing Guidelines range is an advisory range to be considered by the Court along with other appropriate sentencing factors. Defendant understands that the Court alone will determine an appropriate sentence, which may or may not be consistent with any agreements or recommendations of the parties. Defendant understands that if the Court does not follow any agreements or recommendations made by the parties, he does not have the right to withdraw his plea of guilty. Defendant understands and acknowledges that he could receive up to the maximum penalties provided by law if the Court so determines, and that the parties’ agreement as to a recommended Base Offense Level has no bearing and does not impact Defendant’s ultimate tax, interest or penalty liability to the IRS.

DEFENDANT'S ADDITIONAL OBLIGATIONS

3. Defendant further agrees that he will pay to the United States Clerk of Court, prior to or at the time of sentencing, the mandatory special assessment in the total amount of \$100.

4. Defendant further agrees that he is not a prevailing party as defined by the Hyde Amendment, Public Law 105-119, Title VI, Nov. 26, 1997 (set forth as a statutory note under 18 U.S.C. § 3006A) and hereby expressly waives filing any suit or asserting any claim against the United States, including its agents and employees, under said provision.

5. Defendant further agrees to (1) file with the IRS complete and accurate tax returns for all tax years and periods up to and including the date of sentencing, which were required to be filed pursuant to the tax laws of the United States but which have not previously been filed; (2) file with the IRS complete and accurate amended returns for all previously-filed incomplete or inaccurate tax returns, for all tax years and periods up to the date of sentencing; (3) fully cooperate with the IRS in order to determine and calculate all taxes, interest and penalties due and owing by Defendant to the United States, including, but not limited to making Defendant's books and records available, and providing supporting documentation, to the IRS for examination and copying upon reasonable request; (4) pay to the IRS all taxes, penalties and interest due and owing by Defendant to the United States, including, but not limited to, all taxes, penalties and interest owed on all returns filed pursuant to this Plea Agreement, or, if financially unable to do so, make repayment arrangements with the IRS which are satisfactory to the IRS, and (5) comply with the tax laws of the United States. Defendant agrees that nothing in this agreement forecloses or limits the ability of the Internal Revenue Service to examine and make

adjustments to any return filed pursuant to this agreement, and that defendant will not, after filing the returns, file any claim for refund of taxes, penalties, or interest for amounts attributable to the returns filed in connection with this Plea Agreement.

6. Defendant further agrees to allow the contents of his IRS criminal file to be given to civil attorneys and support staff of the IRS to enable them to investigate any and all taxes and penalties that may be due and owing by Defendant. With respect to disclosure of the criminal file to the IRS, Defendant waives any rights under 26 U.S.C. § 7213, and any other right of privacy with respect to Defendant's tax returns and return information.

7. Defendant further agrees to make full restitution for the losses caused by Defendant's activities. Defendant agrees that, in return for the USAO's compliance with its obligations under this Plea Agreement, the amount of restitution is not restricted to the amounts alleged in the count to which Defendant is pleading guilty and may include losses arising from charges not prosecuted pursuant to this Plea Agreement as well as all relevant conduct in connection with those counts and charges. Defendant further agrees that nothing herein constitutes a final determination of Defendant's tax, interest or penalty liability for any tax year or period, or precludes the IRS from further efforts to determine and collect taxes, interest or penalties from the Defendant.

THE USAO'S OBLIGATIONS

8. If Defendant complies fully with all of his obligations under this Plea Agreement, the USAO agrees:

a) At the time of sentencing, provided that Defendant demonstrates an acceptance of responsibility for the offense up to and including the time of sentencing, to recommend a two-

level reduction in the applicable sentencing guideline offense level, pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary, move for an additional one-level reduction if available under that section. Defendant acknowledges and understands that the Court, with the assistance of the Probation Office, will independently determine his sentence, whether he has accepted responsibility, and whether any reduction is appropriate. Furthermore, Defendant acknowledges and understands that he will not be permitted to withdraw his guilty plea if the Court determines that this reduction is not appropriate, in whole or in part.

b) At the time of sentencing, to inform the Court, for purposes of its consideration of the sentencing factors under 18 U.S.C. § 3553(a), that Defendant entered into this Plea Agreement pursuant to the Expedited Plea Program of the IRS and the U.S. Department of Justice's Tax Division. Defendant acknowledges and understands that the Court, with the assistance of the Probation Office, will independently determine his sentence and whether any reduction, variance, or other consideration for participating in the Expedited Plea Program is appropriate. Furthermore, Defendant acknowledges and understands that he will not be permitted to withdraw his guilty plea if the Court determines that no such reduction, variance or other consideration is appropriate, in whole or in part.

BREACH OF AGREEMENT

9. If Defendant, at any time between the execution of this agreement and Defendant's sentencing on a non-custodial sentence or surrender for service on a custodial sentence, knowingly violates or fails to perform any of his obligations under this agreement ("a breach"), the USAO may declare this agreement breached. If the USAO declares this agreement breached, and the Court finds such a breach to have occurred, Defendant will not be able to

withdraw Defendant's guilty plea, and the USAO will be relieved of all of its obligations under this agreement.

10. Following a breach of this Plea Agreement by Defendant, should the USAO elect to pursue the charge contained in the Information by way of Indictment, or any other charge that was either dismissed or not filed as a result of this Plea Agreement, then:

a) Defendant agrees that any applicable statute of limitations is tolled between the date of Defendant's signing of this agreement and the commencement of any such prosecution or action.

b) Defendant gives up all defenses based on the statute of limitations, any claim of preindictment delay, or any speedy trial claim with respect to any such prosecution, except to the extent that such defenses existed as of the date of Defendant's signing of this agreement.

c) Defendant agrees that: i) any statements made by Defendant, under oath, at the guilty plea hearing; ii) the Statement of Facts attached to this agreement; and iii) any evidence derived from such statements, are admissible against Defendant in any future prosecution of Defendant, and Defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule, that the statements or any evidence derived from any statements should be suppressed or are inadmissible.

WAIVER OF APPEAL AND COLLATERAL ATTACK

11. Defendant waives and gives up, to the extent permitted by law, his right to challenge the judgment of conviction, sentence, and the manner in which the sentence is determined, provided that it is within the statutory maximum, whether by direct appeal or

collaterally. This includes, but is not limited to, a waiver of Defendant's right pursuant to 18 U.S.C. § 3742 to appeal his sentence. Defendant further understands that the USAO retains its right and/or duty to appeal the sentence. However, if the USAO files such an appeal, Defendant shall be released from the above waiver of appellate and collateral attack rights.

DISCUSSION, UNDERSTANDING, COMPLETE AGREEMENT, USAO

12. By signing this Plea Agreement, Defendant acknowledges that he has read and discussed its terms with his attorney, and that he understands and accepts those terms voluntarily, without duress or coercion, and of his own free will. Further, Defendant acknowledges that this document contains the entire Plea Agreement between the Defendant and the USAO through its undersigned attorney. No other agreements, promises, deals, bargains or understanding exist which modify or alter these terms. This Plea Agreement binds only the United States Attorney's Office for the Southern District of Ohio and does not bind any other federal, state or local prosecuting authority.

GREGORY D. LOCKHART
United States Attorney

VIPAL J. PATEL
Deputy Criminal Chief
Assistant United States Attorney

Date

MARTIN JEFF DORF
Defendant

Date

KENNETH R. SHEETS
Attorney for MARTIN JEFF DORF

Date